

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN DEAN EVANS,

Petitioner,

v.

JEFFREY A. UTTECHT,

Respondent.

Case No. C15-1601 RSM-BAT

**REPORT AND
RECOMMENDATION**

Petitioner Kevin Dean Evans filed this action under 28 U.S.C. § 2254. Dkt. 4. On June 17, 2016, he filed his amended petition. Dkt. 22. Respondent argues that this Court should either transfer the petition to the Ninth Circuit pursuant to Ninth Circuit Rule 22-3(a) or deny the petition with prejudice because it is untimely and procedurally barred. Dkt. 23. Petitioner requests that this Court transfer his petition to the Ninth Circuit Court of Appeals because his petition meets the criteria of 28 U.S.C. § 2244(b)(3). Dkt. 27.

The undersigned recommends that the petition be transferred to the Ninth Circuit Court of Appeals and this case be administratively closed.

DISCUSSION

In 1995, Mr. Evans was convicted by a jury of two counts of first degree murder. Dkt. 12, Exhibit 1, Judgment and Sentence, *State v. Evans*, King County Cause No. 94-1-06431-9. In 2001, Mr. Evans filed his first habeas corpus petition challenging the 1995 judgment and sentence. Dkt. 24, Exhibit 22, *Evans v. Lambert*, USDC Cause No. C01-0826-RBL. This Court denied the

petition with prejudice in 2003. *Id.*, Exhibit 23 (Report and Recommendation); Exhibit 24 (Order Denying § 2254 Petition); Exhibit 25 (Judgment).

Mr. Evans's present petition is a successive second habeas petition in violation of 28 U.S.C. § 2244 as he failed to request Ninth Circuit Court of Appeals' authorization prior to filing his second petition. Therefore, this Court may dismiss the petition for lack of jurisdiction pursuant to 28 U.S.C. § 2244(a). Alternatively, Mr. Evans contends and respondent acknowledges that this Court may transfer the petition to the Ninth Circuit for consideration as an application for leave to file a successive petition. *See* Ninth Circuit Rule 22-3(a).

CONCLUSION

The Court recommends that this petition be transferred to the Ninth Circuit and that the file be administratively closed without deciding whether the petition should be dismissed.

Any objections to this Recommendation must be filed and served upon all parties no later than **Wednesday, September 21, 2016**. The Clerk should note the matter for **Friday, September 23, 2016**, as ready for the District Judge's consideration if no objection is filed. If objections are filed, any response is due within 14 days after being served with the objections. A party filing an objection must note the matter for the Court's consideration 14 days from the date the objection is filed and served. The matter will then be ready for the Court's consideration on the date the response is due. Objections and responses shall not exceed twelve (12) pages. The failure to timely object may affect the right to appeal.

DATED this 31st day of August, 2016.



BRIAN A. TSUCHIDA
United States Magistrate Judge